No. 93-5

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JOHNNY H. WATERS, ET AL.

Plaintiffs/Appellants/Petitioners

v.

STATE OF ALABAMA

THE UNIVERSITY OF ALABAMA BIRMINGHAM MEDICAL CENTER, UNIVERSITY OF ALABAMA HOSPITALS, ET AL.

Defendants/Appellees/Respondents

PETITION FOR WRIT FOR CERTIORARI FROM U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ORAL ARGUMENT REQUESTED

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QUESTIONS PRESENTED

I. Whether Jeanne Carol Waters constitutional right to live and due process under the 5th and 14th Amendments to the U.S. Constitution were violated when a resident doctor, who had performed the same operation two times on patient/petitioner, and had her life support systems removed when he had no authorization from UAB Hospital or a court order after the patient/petitioner had been given drug Pavulon to induce unconsciousness?

II. Whether the civil rights [42 U.S.C. § 1983] were violated because of the constitutional rights of Jeanne Carol Waters were violated [5th and 14th Amendments to the U.S. Consitution and question of whether under 2-year or the 6-year statute of limitations because of trespass on the person as seen in the Alabama case [Beard v. Stevens, 372 F. 2d 685, (1987)] because Jeanne Carol Waters was assaulted and trespassed on her person by the

QUESTIONS PRESENTED (CONTINUED)

unauthorized pulling of her life support systems by resident doctors [doctors in training when she had been induced to be unconscious by a drug, Pavulon, causing her die [she lived approximately 2 hours after pulling life support system indicating she was not brain dead]

after she had been induced to be unconscious by a drug, Pavulon, causing her to die?

III. Whether a hospital can bury their mistakes and wrong doings by their agents, resident doctors [doctors in training] with legal technicalities that infringe upon the U.S. Constitutional rights of Jeanne Carol Waters by violating her civil rights when she had a right to live under the 5th and 14th Amendments to U.S. Constitution.

IV. Whether the instant case concerning the constitutional right to live is a first impression case and the Supreme Court of the United States has jurisdiction of the case and

QUESTIONS PRESENTED (CONTINUED)

can consider the merits of the case and rule as to the length of time this type of civil rights violation led to the premature and wrongful death of Jeanne Carol Waters, i.e. whether the 2-year statute or 6 year statute of limitations is applicable and when there is a life threatening civil rights violation whether this is a trespass on the person and comes under the 6-year statute of limitation or whether a procedural state law on statute of limitations can infringe on constitutional rights of the 5th and 14th amendments to the U.S. Constitution when the right to live and due process in the courts has been violated?

V. Whether the State of Alabama in failing to repsond to the state law on sovereign immunity exception of injury to the person being challenged should be considered as default and the instant case should be reversed and remanded because the State law

QUESTIONS PRESENTED (CONTINUED)

was challenged, and when a state law on sovereign immunity (in this case excception to sovereign immunity because of trespass on person, impinges on the constitutional right to live under the 5th and 14th Amendments to U.S. Constitution then then the federal should prevail?

PARTIES TO THE PROCEEDING

The Plaintiffs/Appellants/Petitioners are: Johnny H. Waters, Joseph H. Waters, and Jeanne Carol Waters.

The Defendants/Appellees/Repondents are: State of Alabama; The University of Alabama Birmingham Medical Center, University of Alabama Hospitals, Dr. Stephen Hipp, Dr. Peggy Austin-Vives, and Dr. L. Clark Taylor.

ORAL ARGUMENT REQUESTED

The Petitioner respectively requests that oral argument be allowed because of the complexity of the facts and the law in the instant case, and so that the Honorable Justices can ask questions.

CITATIONS OF AUTHORITY

Bantam Books Inc. v. Sullivan, R.I., 1963,
83 S Ct 631, 372 U.S.58, 9 L. Ed 2d 584 1

Beard v. Stevens,
372 F. 2d 685 (1987) 7,11,1
11,19,2

Hickman v. Dothan City Bd. of Educ.
421 So. 2d 1257 (Ala. 1982) 2

Horwitt v. Horwitt, D.C. Conn. 1950,
90 F. Supp. 529 2

Jones v. Alabama State Docks,
443 So. 2d 902 (Ala. 1983) 2

Jones v. Preuit & Mauldin,
876 F. 2d 1480 (11th Cir. 1989) ... 7,11,1

Monell v. New York City Dept. of Soc. Serv.
436 U.S. 658, 56 L. Ed 2d 611,
98 S. Ct 2018 14,2

Owens and Lessard v. Okure
57 LW 4065 at 4069 7,11,1
15,17,1

Standard Oil Co. v. Graves, Wash. 1919,
49 S Ct 320, 249 U.S. 389, 63 L. Ed. 662 ..1

Velger v. Cawley,
525 F. 2d 334 (2nd Cir. 1975) 2

BEST AVAIL

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JOHNNY H. WATERS, ET AL.

Plaintiffs/Appellants/Petitioners

v.

STATE OF ALABAMA

THE UNIVERSITY OF ALABAMA BIRMINGHAM

MEDICAL CENTER, UNIVERSITY OF ALABAMA

HOSPITALS, ET AL.

Defendants/Appellees/Respondents

PETITION FOR WRIT FOR CERTIORARI FROM

THE SUPREME COURT OF ALABAMA

OPINIONS BELOW

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below into this Writ of Certiorari.

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JURISDICTION

Reversal and review is sought from the final decision of the U.S. Court of Appeals Eleventh Circuit, and from the Supreme Cour of Alabama, the highest court in Alabama wh originally denied the appeal. Jurisdiction invoked under 28 U.S.C. § 1254 as Writ.

Constitutional Provisions involved

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of

... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

The original case was timely filed on Jan. 2, 1991, when the Complaint was filed with Exhibits (Vol. I, p. 1-25).

On March 11, 1991, the Plaintiffs attorney filed three volumes of medical records from the University of Alabama Hospitals, and other medical records (Vol. I, p. 52 through Vol. IV, p. 701, including autopsy reports.)

Threshold issue is on the DeStafney exception on person injury applies [DeStafney v. University of Alabama, 413 So. 2d 1281 (Ala. 1981)],

and the instant case should be reversed and remanded to Jefferson County where the personal injury took place before the wrongful death of Jeanne Carol Waters which is the subject of this appeal. Jeanne Carol Waters died in Jefferson County Alabama [See Certificate of death, dated April 2, 1989, in Jefferson County, Alabama, Vol. III, p. 570].

The federal case was filed to challenge the procedural law of sovereign immunity blocking the due process in the state, as well as filing a civil rights violation of Jeanne Carol Waters rights under the 5th and 14th Amendments of the right to live under the U.S. Constitution since her life was taken when the life support systems were pulled by the same resident doctor who had to performed the same operation two times at the UAB Hospital in Birmingham, Alabama.

The Petitioner points out the inconsistency of the law, especially on **trespass of the person** which is applicable in the instant case.

Jeanne Carol Waters was transferred from a Selma Hospital by air transport and Dr. Hipp performed an operation on her head and Dr. Hipp failed to use proper surgical technique and he failed to use peri-operative antibodies and she developed Staphyloccocus aureus and Dr. Hipp had to perform the same operation the second time. The point is that Dr. Hipp, a resident doctor [doctor in training] failed to contact his superior, a staff doctor at the hospital, and pulled the life support systems of Jeanne Carol Waters when she was not yet brain dead, and Dr. Hipp pulled the life support systems from Jeanne Carol Waters without authorization from the hospital, family or court order, which was the proximate cause of the premature and wrongful death of Jeanne Carol Waters. She had given normal birth to Joseph H. Waters, three months before she died.

Jeanne Carol Waters who had been induced to be unconscious with the drug Pavulon was unable to give permission to have her life support systems removed. In fact, Jeanne Carol Waters

was clearly assaulted and her person trespassed upon when the resident doctor without authorization from the hopsital, family or court order pulled the life support systems off Jeanne Carol Waters who had been induced to be unconscious and lived approximately 2 hours before she died showing she was not brain dead.

The Petitioner incorporates all statements in the "Statement of the Facts" into this section of the Brief.

STATEMENT OF THE FACTS

The Petitioner, Jeanne Carol Waters, had a right to live under the 5th and 14th Amendments to the U.S. Constitution, and when the resident doctors, Dr. Hipp and Dr. Austin-Vives pull the life support systems at UAB Hospital in Birmingham, without any authorization from the hospital or court order, the civil rights of Jeanne Carol Waters was violated under the 42 U.S.C. § 1983, especially since Jeanne Carol Waters had been induced to be unconsicious with the drug Pavulon.

See **Beard v. Stevens,** 372 F. 2d 685 (1987), which states, "Alabama six-year statute applicable to trespass applied to action against sheriff and deputies for alleged civil rights violations..."

This law in Beard case supra is in direct conflict with Owens v. Okure, 488 U.S. 235 (1988); Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989); and Code of Alabama § 6-2-38(1) (Supp. 1992), 2-year statute of limitations where state law infringes upon the constitutional rights of Jeanne Carol Waters, right to live and due process under the 5th and 14th Amendments to the U.S. Constitution which triggers in the 42 U.S.C. § 1983 civil rights claim.

The Petitioner is respectively asking this Honorable court to review the Owens v.Okure supra case with the Beard v. Stevens case and determine if the trespass on the person applies in the instant case because Jeanne Carol Waters

was not brain dead when the life support systems were removed because she breathed on her own for approximately two hours. If she had been brain dead she would have died instantly when the life support systems were removed. The hospital records that were sent in discovery failed to show that Jeanne Carol Waters was brain dead since the hospital sent EKG records [heart records] insead of EEG records [brain records which have never been seen in any record below].

In the state case below the state was claiming sovereign immunity when there is an exception for personal injury under the De Stafney v. University of Alabama, 413 So. 2d 391 (Ala. 1981) at 395 which states,

"Section 14 does not necessarily immunize State officers or agents from individual civil liability."

The DeStafney case at p. 396 states,

... we find that no valid public policy will be served by immunizing from liability a public employee whose tortious conduct results in personal injury to another."

The state law concerning sovereign immunity pursuant to Ala. Const. Art. I, § XIV (1901), was challeged when the State of Alabama was sued in the federal court, U.S. District Court, Middle District of Alabama, and appealed to the U.S. Court of Appeals, Eleventh Circuit, and now written as a Writ of Certiorari to the Supreme Court of the United States.

The state of Alabama has conflicting law as to whether the two-year statute of limitations or six-year statute of limitations applies in the instant case because clearly Jeanne Carol Waters was trespassed on her person because she had been induced to be unconscious by the drug, Pavulon, before the life support systems were illegally pulled, i.e. Jeanne Carol Waters was assaulted when the life support systems were pulled by a resident doctor [doctor in training who had performed the **same operation** two times] and an employee **of the University of Alabama Hospitals, Birmingham... and the resident doctor was reponsible**

for the personal injury and wrongful death of Jeanne Carol Waters due to the resident doctor negligence and breach of acceptable standards of practice by pulling life support systems without any valid medical or legal reason and therefore the medical services were below standards in the community due to the UAB Hospital agents, servants and/or employees, including the negligence in the hiring by Dr. L. Clark Taylor, Jr.

It appears that the taking of the life by the hospital's agent, resident doctor, Dr. Hipp, who was in training, that caused Jeanne Carol Waters constitutional right to life under the 5th and 14th Amendment to the U.S. Constitution has been ignored by both state and federal courts below by the state court alleging a defense of sovereign immunity which was challenged in the federal court, and by the federal court alleging technicalities which was explained in the oral argument, i.e. there are two conflicting statutes of limitations law in the

state of Alabama concerning civil rights. The two-year statute and the six-year statute. The case Owens v. Okure, 488 U.S. 235 (1988) and Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989), and Code of Alabama § 6-2-38(1) (Supp. 1992), should be re-evaluated with Beard v. Stevens, 372 F. 2d 685 (1987) which applied the Alabama six-year statute which was applicable to trespass applied to action against sheriff and deputies for alleged civil rights violations. The instant case is similar to the Beard v. Stevens case because Jeanne Carol Waters lived approximately 2 hours after her life support systems had been removed by resident doctor without authorization from the hospital or court order, and Jeanne Carol Waters had been given the drug Pavulon to make her unconscious.

The point is this case is now a case where state and federal legal technicalities are causing and infringing upon the constitutional right of Jeanne Carol Waters' right

to life under the 5th and 14th Amendments to the U.S. Constitution, and therefore, under federal law such as Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 249 U.S. 389, 63 L. Ed. 662, the federal constitutional rights should prevail.

The Writ of Certiorari should be granted and a merits brief allowed to be written, and then the instant case should be reversed and remanded with instructions on constitutional law to the trial court to be tried by a jury on all triable issues in the instant case.

The Owens v.Okure case supra and quoted in this Brief p.15 in Alabama is inconsiatent with the trespass on the person 6-year statute in Beard case supra and quoted in this Brief p.14 and especially since the Owens v. Okure case stands for the fact federal law can override certain state law. The Honorable Supreme Court of the United States should re-interpret this Owens v. Okure case as to the exception of trespass on the person, wrongful death, and/ or MURDER I, when life support systems are

pulled by resident doctor, who was not authorized by the hospital, court order or consent of the family. The point is that the same resident doctor, Dr. Hipp, pulled the life support systems that had to perform the same operation a second time on Jeanne Carol Waters because his first operation was performed in a substandard manner.

Damages were also to the family by the resident doctor having perform the same operation two times, because her husband, Johnny Waters, had to obtain different insurance and the price of the insurance subtantially increased because of the insurance that had to be paid for the hospital treatment and wrongful death of his wife, Jeanne Carol Waters. In obtaining new insurance, the husband had to wait for two years for certain types of coverage.

The Writ of Certiorari should be granted.

REASONS FOR WRIT OF CERTIORARI

QUESTIONS I,II, AND III discussed this sectio of Writ, showing violation of due process unde 5th and 14th Amendments and civil rights.

The Appellant points out the inconsistency of the law, especially on trespass of the person which is applicable in the instant case.

See **Beard v. Stevens**, 372 F. 2d 685 (1987), which states, "Alabama six-year statute applicable to trepass applied to action against sheriff and deputies for alleged civil rights violations..."

This law in Beard case is in direct conflict with Owens v. Okure, 488 U.S. 235 (1988); Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989); and Code of Alabama, § 6-2-38(1) (Supp. 1992), state law infringes upon the constitutional rights of Jeanne Carol Waters, righ to live and due process under the 5th and 14th Amendments to the U.S. Constitution which triggers in the 42 U.S.C. § 1983 civil rights clain Monell v. New York City Dept. of Soc. Serv. 436 U.S. 658, 56 L. Ed 2d 611, 98 S. Ct 2018,

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which states,

"Civil Rights § 12.5 -- Liability for violations -- state law immunities - 11a, 11b. State-law immunities do not override a cause of action under 42 U.S.C. § 1983, which imposes civil liability on any person who deprives another of the federally protected rights."

See Owens and Lessard v. Okure, 57 LW 4065 at 4069 which states,

"We explained that the Civil Rights Acts provided: "[a] unique remedy making it appropriate to accord the statute a sweep as broad as its language.' Because the § 1983 remedy is one that can 'override certain kinds of state laws.' Monroe v. Pape, 365, U.S. 167, 173, (1961), and is in all events, supplementary to any remedy any State might have..."

Also see Bantam Books, Inc. v. Sullivan, R.I., 1963, 83 S Ct 631, 372 U.S. 58, 9 L. Ed 2d 584, which states,

"The Supreme Court's appellate jurisdiction was properly invoked, where the state court judgment sought to be reviewed upheld a state statute against contention that on its face and as applied, the statute violated the federal Constitution."

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See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 269 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void.] (Emphasis added.)

In the instant case, the same person, Dr. Hipp [Resident doctor] who had to operate on Jeanne Carol Waters two times for the same type of operation, induced unconsciousness by drug, Pavulon, and then he pulled the life support systems of Jeanne Carol Waters [not talking about allegedly pulled life support systems but actually pulled life systems and he signed his name in medical record of UAB] which was called wrongful death in this case but was actually **MURDER I** to cover his mistakes of having to operate two (2) times on Jeanne Carol Waters.

Jeanne Carol Waters was not brain dead but induced to be unconscious by drug, Pavulon, and she breathed from 9:20 A.M. to 11:00 A.M. on her own showing she was not brain dead after the unauthorized removal of her life support systems.

The UAB hospital tried to cover the death incident by producing heart record, EKG's, instead of EEG's and certainly Jeanne Carol Waters had a right to live under the 5th and 14th Amendments to the U.S. Constitution, and has not received due process in the judicial system with the Owens v. Okure, supra case.

The Owens v. Okure case supra, in Alabama is inconsistent with the trespass on the person 6-year statute in Beard case, quoted above, and especially since the Owens v. Okure case stands for the fact federal law can override certain state law. The Honorable Supreme Court of the United States should reinterpret this Owens v. Okure, as to the exception of trespass on the person, wrongful death, and/or MURDER I, when

life support systems are pulled by resident doctor who was not authorized by the hospital, court order, or consent of the family.

There is a question whether wrongful death and/or trespass on the person (assault), and/or MURDER I, can toll the time of any statute of limitations when the patient, Jeanne carol Waters, was unconscious by drug induced Pavulon, and she could not give her consent.

There is no doubt about if if the 2-year statute of limitations is allowed to stand, then, state law technicality is infringing on federal law, the right to live of Jeanne Carol Waters, under the 5th and 14th Amendments to U.S. Constitution, which triggers in the 42 U.S.C. § 1983. The question is does the 2-year statute of limitations apply to direct violations of the Constitution of the United States, 5th and 14th Amendments as to right to live and due process lacking in the court system.

The Honorable Supreme Court of the United States may need to deterimine if there is any conflict of law in this case, and whether exceptio

and redefine **Owens v. Okure supra,** if the conflict of state law in Alabama has more than one statute of limitations on civil rights [See Beard case supra] especially when trespass on the person, wrongful death and/or MURDER I, where a hospital is trying to bury the mistake of allowing a resident doctor to operate two times on same patient for same thing and same doctor pulls life support system and Jeanne Carol Waters dies.

QUESTION IV. discussed in this section concerns exception to sovereign immunity.

The state case was timely filed within two-year statute, and further this case was also challenging the state law concerning sovereign immunity, and the state of Alabama failed to properly answer to sovereign immunity law, which was challeged in this instant case as to whether alleged sovereign immunity was infringing on federal law when state had an exception for personal injury as seen in the DeStafney case.

See DeStafney v. University of Alabama, 413

So. 2d 391 (Ala. 1981), at 395, which states,

"Section 14 does not necessarily immunize S officers or agents from individual civil liability."

The DeStafney case at p. 396 states,

"We find that no valid public policy will served by immunizing from liability a public employee whose tortious conduct results in perosnal injury to another."

Concerning dismissal on the grounds of sovereign immunity pursuant to Ala. Const. I § XIV (1901), the Plaintiff is not sueing th state direct but the employees of the University of Alabama Hospitals, Birmingham... responsible for person injury and wrongful death of Jeanne Carol Waters due to negligently breach of acceptable standards of practice in providing such medical services in that Defendants' agents, servants and/or employees, including the negligence in the hiring by Dr. L. Clark Taylor, Jr.

See Hickman v. Dothan City Bd. of Educ. 421 So. 2d 1257, at 1258 (Ala. 1982), which states,

"Alleged negligent conduct of a state employee, even when committed in line and scope of employment, is not within protection of constitutional provision governing sovereign immunity. Const. § 14."

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

See DeStafney v. University of Alabama, 413 So. 2d 391, at 395 which states,

"Clearly, under the guidelines of Gill and Milton, a claim for personal injury based upon the alleged negligent conduct of a State employee, even when committed in the line and scope of employment, is not within the ambit of § 14's protection.

Clearly, the Honorable trial judge made reversible error when the violation of Jeanne Carol Waters due process rights to live under the 5th and 14th Amendments to the U.S. Constitution, and he due process rights to be in the courts under the personal injury [trespass on the person], exception to the sovereign immunity of a state.

DeStafney Exception on Personal Injury applies to sovereign immunity defense of stat hospital, University of Alabama Hospitals, ir Birmingham, and its agents, Dr. Taylor, Administrator, and its agents as resident doctors, Dr. Hipp and Dr. Vives-Austin because the Honorable trial court judge made reversible error and was plainly and palpably wrong and unjust in his order.

The state of Alabama itself was sued in thi federal case as seen in the Complaint [Vol. 1 p. 1] for interpretation of law where a state is infringing on the constitutional rights of an individual's right to live under the 5th and 14th amendments to the U.S. Constitution.

These constitutional violations trigger the 42 U.S.C. § 1983, and in the instant case, the 6-year statute of limitations is applicable because of trespass on person - See Beard v. Stevens, 372 F. 2d 685 (1987).

There is a conflict as stated above as to whether the 2-year or 6-year statute of limitations applies to violation of civil rights under 42 U.S.C. § 1983 because of the personal injury of the resident doctors [doctors in training] pulling the life support systemes of Jeanne Carol Waters resulting in her wrongful death [MURDER I - since one of the resident doctors had to perform the same operation twice on Jeanne Carol Waters] and the unauthorized pulling of life support systems when Jeanne Carol Waters was not brain dead, but had been induced in a comatose condition at the UAB Hospital in Birmingham by the drug Pavulon [See medical records which are part of the Record, Vol. I, NR 19] should clearly come under trespass on the person

under the Beard v. Stevens, 372 F. 2d 685 (1987), which states,

"Alabama six-year statute applicable to trespass applied to action against sheriff and deputies for alleged civil rights violations..."

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) on due process. There was no notice or hearing to pull the life support system of Jeanne Carol Waters [violatio of her due process rights under the 5th and 14th amendments to U.S. Constitution, right to live], when the resident doctor had to perform the same operation two times on Jeanne Carol Waters and he decided to pull the life support systems without authorization from the hospital or any court, and she died a wrongful death. Secondly, the due process rights under the 5th and 14th Amendments to the U.S. Constitutional right to live comes under the failure of the state

court to recognize own law as to the exception to state immunity as to person injury when is met in the DeStafney case supra above exception. The third due process rights of Jeanne Carol Waters is violated when the 6-year statute of limitations as to trespass on the person was not observed as stated in the Beard case supra.

See Horwitt v. Horwitt, D.C., Conn. 1950, 90 F. Supp. 529,

"United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes."

University of Alabama Hospital agents, resident doctors, violating the 5th and 14th amendments to the U.S. Constitution and triggered 42 U.S.C. § 1983 as to 3½ months old of Jeanne carol Waters that was wrongfully deprived of his mother and there is no immunity for the University of Alabama Hospitals as shown in Monell v. New York City Dept. of Soc. Serv., 436 U.S. 658, 56 L. Ed 2d 611,

98 S. Ct 2018, which states,

"Civil Rights § 12.5 -- liability for vi
lations -- state law immunities - 11a,11b.
State-law immunities do not override a cau
of action under 42 U.S.C. § 1983, which im
poses civil liability on any person who de
prives another of his federally protected
rights."

CONCLUSION

The Writ of Certiorari should be granted for the above reasons, and the Petitioner should be allowed to write the Merits brief so that the instant case can be reversed and remanded to the trial court for all triable issues before a jury.

Respectively submitted,

Julia Asam

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above was went to Hon. Jimmy Evans, Attorney General, State of Alabama, Montgomery, Alabama 36101, Mr. Robert D. Norman, Norman, Fitzpatrick et al, 1800 City Federal Building, Birmigham, Ala. 35203, and Mr. H.M. Trechsel, Office of Counsel, University of Alabama System, UAB Station, MJH, 112, Birmingham, Alabama 35294-2010 this 7 day of June 1993.

Julia Asam

APPENDIX I

IN THE SUPREME COURT OF ALABAMA

October Term, 1991-92

1901222

Johnny H. Waters, et al.

v.

University of Alabama Hospitals, et al.

Appeal from Jefferson Circuit Court

(CV-91-014)

KENNEDY, JUSTICE. October 18, 1991

Johnny and Joseph Waters filed a wrongful death action against the University of Alabama Board of Trustees; the University of Alabama at Birmingham; the University of Alabama Hospitals; Dr. Charles McCallum, president of the University of Alabama at Birmingham; and Dr. L. Clark Taylor, Jr., administrator of the University of Alabama Hospitals. The action also named other defendants who are not involved in this appeal. The trial court dismissed the defendants named above and

made that judgment final pursuant to Rule 54(b), A.R.Civ.P.

The Waterses' notice of appeal indicated that they appeal only the judgment for the University of Alabama Hospitals; it does not provide any notice of appeal from the judgment for the other defendants in whose favor the judgment was entered. However, in their brief, the plaintiffs argue against the judgment for the University of Alabama Board of Trustees, Dr. McCallum, and Dr. Taylor.

The plaintiffs present no cognizable argument [**issue exception of sovereign immunity ignored* see Application for Rehearing and Brief for response to this opinion**] against the University of Alabama Hospitals. Accordingly, the plaintiffs present only arguments against the judgment for those parties concerning whom they filed no notice of appeal, and they present no arguments

on the judgment for the party concerning whom they filed a notice of appeal. We will not address arguments concerning a judgment not appealed from; furthermore, "when the appellant fails to invite the appellate court's review of any issues raised from the court below, the trial court's judgment is due to be affirmed." Wilger v. James, 431 So. 2d 1166 (Ala. 1983).

AFFIRMED.

Hornsby, C.J., and Maddox, Shores, and Houston, JJ., concur.

***Because issue on sovereign immunity exception was ignored, the federal case that was appealed from in the U.S. Court of Appeals, Eleventh Circuit was filed and now before the Honorable Supreme Court of the United States as a Writ of Certiorari.**

APPENDIX II

IN THE SUPREME COURT OF ALABAMA

1901222

Johnny H. Waters, et al.

v.

University of Alabama Hospitals, et al.

Appeal from Jefferson Circuit Court

(CV-91-014)

Application for rehearing overruled. No opinion written on rehearing. Per Curiam Hornsby, CJ., Maddox, Shores, Houston and Kennedy, JJ., concur.

December 13, 1991.

APPENDIX III

In the U.S. District Court,

Middle District of Alabama

92-A-0065-N March 11, 1992

Motion to Dismiss granted.

Hon. Judge Albritton

APPENDIX IV

IN THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 92-6283

D.C. Docket No. 92-A-65-N

JOHNNY H. WATERS AND JOSEPH HUGH WATERS (Minor, and next of kin, Johnny H. Waters, Father), and ON BEHALF OF JEANNE CAROL WATERS, DECEASED,

Plaintiffs-Appellants,

versus

STATE OF ALABAMA: THE UNIVERSITY OF ALABAMA BIRMINGHAM MEDICAL CENTER: UNIVERSITY OF ALABAMA HOSPITALS: DR. CHARLES McCALLUM: DR. L. CLARK TAYLOR, JR., ADMINISTRATOR: DR. STEPHAN HIPP: AND DR. PEGGY VIVES-AUSTIN: FICTITIOUS DEFENDANTS 1-10,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Alabama

February 16, 1993

Before FAY AND KRAVITCH, Circuit Judges, and RONEY, Senior Circuit Judge.

PER CURIAM:

AFFIRMED. See Owens v. Okure, 488 U.S. 23 (1989); Jones v. Preuit & Mauldin, 876 F. 2 1480 (11th Cir. 1989); and Code of Alabama § 6-2-38(1) (Supp. 1992).

APPENDIX V

IN THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 92-6283

JOHNNY H. WATERS, ET AL.

Plaintiffs/Appellants

v.

STATE OF ALABAMA, ET AL.

Defendants/Appellees

On Appeal from the U.S. District Court for the Middle District of Alabama

ON PETITION FOR REHEARING

BEFORE: Fay and Kravitch, Circuit Judges, a RONEY, Senior Circuit Judge.

PER CURIAM:

The petition for rehearing filed by appellant Johnny H. Waters, et al. is denied.

Entered March 12, 1993.